

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P.No.26743 of 1998

Date: 10th July, 2007.

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Between:

D.Mohana Rao

Petitioner

And

The Executive Engineer,
Vamsadhara Project Main Canal Division,
Tekkali, Srikakulam District and others

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.26743 of 1998

ORDER:

1. This writ petition is directed against an Award passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam, rejecting the Industrial Dispute No. 217 of 1993 instituted by the writ petitioner.

2. It is the case of the writ petitioner that he worked as a Man Mazdoor with the Vamsadhara Project of the Irrigation Department of the Government of Andhra Pradesh from 01-05-1979 and ultimately he had been checked out of employment on 31-12-1989, whereas the respondents have asserted that he was intermittently engaged between 1984 and 1986 on hand receipts basis. The writ petitioner asserts that he had put in continuous service and consequently the termination of his services amounts to retrenchment, and it being contrary to the provisions of Section 25-F of the Industrial Disputes Act, 1947 (For short 'the I.D. Act'), he is entitled for reinstatement together with all the benefits. The matter has been contested by the Irrigation Department of the State Government and they have taken a plea that the Department of the Government of Andhra Pradesh cannot be construed to answer the description of the expression 'industry', in terms of the definition contained in Section 2 -J of the I.D. Act. The respondents have also pressed a plea that the writ petitioner had not rendered continuous service and in fact, his very nature of employment is absolutely contingent upon various factors including the availability of work.

3. Two issues have been framed by the Labour Court, one is whether the Irrigation Department of the State Government and the Vamsadhara Project run and managed by it can be construed to be an 'industry' for the Industrial Dispute to be maintainable. The second is whether the workman is entitled to be granted

any relief whatsoever.

4. While dealing with the first issue, the Tribunal had placed reliance on the judgment rendered by the Supreme Court in **The Executive Engineer, State of Karnataka Vs. K.Somesetty and others** ^[1] and came to the conclusion that the Vamsadhara Project of the Irrigation Department of the Government of Andhra Pradesh cannot be termed or construed as an 'industry'.

5. Sri V.Sudhakar Reddy, the learned counsel for the writ petitioner, contends that the Supreme Court in a subsequent judgment rendered in **General Manager, Telecom Vs. A. Srinivasa Rao & others** ^[2] had taken entirely a different view on the same subject and this judgment being later in point of time and also having been rendered by a bench comprising of three -judges of the Supreme Court, the view of the Supreme Court in **The Executive Engineer, State of Karnataka Vs. K. Somasetty and others (1 supra)** has to be considered as not laying down the correct law. It would be appropriate therefore to consider this question first. In **Somasetty's case (1 supra)**, a bench of two learned Judges had considered the question as to whether a department or an establishment run and managed by the Government can be construed to be an 'industry' and concluded the issue in their judgment rendered on 2-5-1997 as follows:

" It is now well settled legal position that the Irrigation Department and Tele-communication Department are not an 'Industry' within the meaning of definition under the Industrial Disputes Act as held in Union of India V. Jai Narayan Singh, and in State of H.P. V. Suresh Kumar Verma. The function of public welfare of the State is a sovereign function. It is the constitutional mandate under the Directive Principles, that the Government should bring about welfare State by all executive and legislative actions. Under these circumstances, the State is not an 'industry' under the Industrial Disputes Act. Even otherwise, since the Project has been closed, the respondent has no right to the post since he had been appointed on daily wages. It is brought to our notice that

respondent has been reinstated. The order of the reinstatement has been placed before us which indicates that at the threat of contempt of Court, the order has been enforced. It is stated therein that it is subject to the final order of this Court in this appeal”.

6. A bench comprising of three learned judges had an occasion to consider this very question in **General Manager, Telecom Vs. A. Srinivasa Rao and others (2 supra)** and the bench speaking through the Chief Justice of India had this to say:

A two-judge Bench of this Court in Theyyam Joseph case held that the functions of the Postal Department are part of the sovereign functions of the State and it is, therefore, not an “industry” within the definition of Section 2 (j) of the Industrial Disputes Act, 1947. Incidentally, this decision was rendered without any reference to the seven-judge Bench decision in Bangalore Water Supply. In a later two –judge Bench decision in Bombay Telephone Canteen Employees, Assn. Case this decision was followed for taking the view that the Telephone Nigam is not an “industry”. Reliance was placed in Theyyam Joseph case for that view. However, in Bombay Telephone Canteen Employees Assn. Case (i.e. the latter decision), we find a reference to the Bangalore Water Supply case. After referring to the decision in Bangalore Water Supply it was observed that if the doctrine enunciated in Bangalore Water Supply is strictly applied, the consequence is “catastrophic”. With respect, we are unable to subscribe to this view for the obvious reason that it is in direct conflict with the seven judge Bench decision Bangalore Water Supply Case by which we are bound. It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in Bangalore Water Supply or to bypass that decision so long as it holds the field. Moreover, that decision was rendered long back- nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in Bangalore Water Supply Case. We must, therefore, add that the decisions in Theyyam Joseph and Bombay Telephone Canteen Employees’ Assn. cannot be treated as laying down the correct law.”

This judgment was rendered on November 18, 1997 and thus it is later in point of time to **Somasetty's case (1 supra)**.

7. Further **A. Srinivasa Rao's case (2 supra)** has been decided by a bench comprising of three learned Judges. Therefore, it is appropriate to consider that the view expressed in **Somasetty's case (1 supra)** which in turn is based upon it's earlier judgments in **Union of India Vs. Jai Narain Singh** ^[3] and **State of H.P. Vs. Suresh Kumar Verma** ^[4] as not a correct view of Law. Since the Labour Court had arrived at the conclusion that the Vamsadhara Project run and managed by the Irrigation Department is not an 'industry' only on the strength of the judgment of the Supreme Court rendered in **Somasetty's case (1 supra)**, the findings in this regard have got to be set-aside.

8. While dealing with the second aspect, the Labour Court had returned a finding of fact that the writ petitioner had continuously worked for more than one year and based thereon he was entitled to the protection available under Section 25- F of the I. D. Act. This finding of fact has been arrived at on a proper and correct appreciation of the material available on record of the Labour Court. Therefore, the writ petitioner is entitled to seek reinstatement. However, he had instituted the Industrial Dispute with enormous delay and after several years of his being ousted from the employment. Therefore, while granting the relief the question of payment of back wages to workman has to be worked out equitably. Effect of belated claims in the form of raising Industrial Disputes and the impact of the same on the relief to be granted, has also engaged the attention of the Supreme Court in the case of **Ajaib Singh Vs. Sirhind Co-operative Marketing-cum-Processing Service Society Ltd.** ^[5] and the Supreme Court concluded the issue in the following manner:

The present Act was enacted with the objects as referred to hereinabove and provided machinery and forum for the investigation of industrial disputes, their settlement for purposes of

analogous and incidental thereto. The emergence of the concept of welfare State implies an end to exploitation of workman and as a corollary to that collective bargaining came into its own. The legislature had intended to protect workmen against victimization and exploitation by the employer and to ensure termination of industrial disputes in a peaceful manner. The object of the Act, therefore, is to give succour to weaker sections of the society which is a pre-requisite for a welfare State. To ensure industrial peace and preempt industrial tension, the Act further aims at enhancing the industrial production which is acknowledged to be life- blood of a developing society. The Act provides a machinery for investigation and settlement of industrial disputes ignoring the legal technicalities with a view to avoid delays, by specially authorized Courts which are not supposed to deny the relief on account of the procedural wrangles. The Act contemplates realistic and effective negotiations, conciliation and adjudication as per the need of the society keeping in view the fast changing social norms of the developing country like India. It appears to us that the High Court has adopted a usual approach in deciding the matter apparently ignoring the purpose, aim and object of the Act.

Thus Court in Bombay Gas Company Ltd. V. Gopal Bhiva (AIR 1964 SC 752) held that provisions of Art. 181 (now Art.137) of the Limitation Act apply only to applications which were made under the Code of Civil Procedure and its extension to applications under S.33 C (2) of the Act was not justified . This position was further reiterated and explained by this Court in Town Municipal Council, Athani V. Presiding Officer, Labour Court, Hubli (AIR 1969 S.C..1335) :

“It appears to us that the view expressed by this Court in those cases must be held to be applicable, even when considering the scope and applicability of Art.137 in the new Limitation Act of 1963. The language of Art.137 is only slightly different from that of the earlier Art.181 inasmuch as when prescribing the three years’ period of limitation, the first column giving the description of the application reads as “any other application for which no period of limitation is provided elsewhere in this division”. In fact the addition of the word “other” between the words “any” and “application” would

indicate that the Legislature wanted to make it clear that the principle of interpretation of Art.181 on the basis of ejusdem generis should be applied when interpreting the new Art. 137. This word "other" implies a reference to earlier articles, and consequently, in interpreting this article, regard must be had to the provisions contained in all the earlier articles. The other articles in the third division to the schedule refer to applications under the Code of Civil Procedure with the exception of applications under the Arbitration Act and also in two cases applications under the Code of Criminal Procedure . The effect of introduction in the third division of the schedule of reference to applications under the Arbitration Act in the old Limitation Act has already been considered by this Court in case of Sha Mulchand and Company ,Ltd., (AIR 1953 S.C.98) (vide supra). We think that, on the same principle, it must be held that even the further alteration made in the articles contained in the third division of the schedule to the new Limitation Act containing references to applications under the Code of Criminal Procedure cannot be held to have materially altered the scope of the residuary. Article 137 which deals with other applications. It is not possible to hold that the intention of the Legislature was to drastically alter the scope of this article so as to include within it all applications, irrespective of the fact whether they had any reference t the Code of Civil Procedure.

This point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the schedule, including Art.181 of the Limitation Act of 1908 governed applications under the Code of Civil Procedure only, it clearly implied that the applications must be presented to a Court governed by the Code of Civil Procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Arts.158 and 178 were to be presented to Courts whose proceedings were governed by the Code of Civil Procedure. At best the further amendment now made enlarges the scope of the third division of the schedule so as also to include some applications presented to Courts governed by the Code of Criminal Procedure. One factor atleast remains constant and that is that the applications must be to Courts to be governed by

the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than Courts, such as a quasi-judicial Tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not Courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to bodies, other than Courts, are now to be governed for purposes of limitation by Art.137"

In Sakura V. Tanaji (AIR 1985 S.C. 1279), it was held that the provisions of the Limitation Act applied only to proceedings in Courts and not to appeals or applications before the bodies other than Courts such as quasi-judicial Tribunal or executive authorities, notwithstanding the fact that such bodies or authorities may be vested within certain specified powers conferred on Courts under the Codes of Civil or Criminal procedure. The view taken by this Court in case Municipal Council, Athani (AIR 1969 S.C.1335) (vide supra) and Nityanand M. Joshi V. LIC of India (AIR 1970 S.C.209) was reiterated with approval."

It follows, therefore, that the provisions of Art.137 of the Schedule to Limitation Act, 1963, are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay.

Even in a case where the delay is shown to the existing the Tribunal, Labour Court or board, dealing with the case appropriately mould the relief by declining to grant back-wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back-wages instead of full back-wages."

9. In this view of the matter, it would be appropriate to direct payment of back wages to the extent of three years while ordering for reinstatement of the writ

petitioner in to service. Therefore, for the reasons set out above, the writ petition is allowed and the Award passed by the Labour Court is set-aside. The writ petitioner shall be reinstated but however, he shall be entitled to payment of back wages for a period of three years from the date of termination. The learned Government Pleader prays for 3 months time. The petitioner be reinstated on or before 15th October,2007. No order as to costs.

NOOTY RAMAMOHANA RAO,J

10-07-2007

NOTE:

C.C. in one week

B/o.

Stp

[1] 1997 (6) Supreme page 13

[2] (1997) 8 SCC 767

[3] (1995) Supp. 4 672

[4] 1996 (2) Supreme 592

[5] 1999 (2) L.L.N. 674